

January 12, 2010



TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Nancy Floreen, President

Councilmember Valerie Ervin, Vice President

Councilmember Phil Andrews

Councilmember Roger Berliner

Councilmember Marc Elrich

Councilmember Michael Knapp

Councilmember George Leventhal

Councilmember Nancy Navarro

Councilmember Duchy Trachtenberg



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1 COUNCIL PRESIDENT FLOREEN:

2 Good afternoon. I do apologize. The County Council ran late in a closed session. Shall we
3 stand for an invocation from Susan Troxel from the Baha'i Faith Community of
4 Montgomery County? Thank you for being here.

5
6 SUSAN TROXEL:

7 Good afternoon, honored Councilmembers, staff, and guests. I'd like to offer a prayer that
8 the proceedings this afternoon be illuminated with the light of truth and unity. O my god, o
9 my god, unite the hearts of thy servants and reveal to them thy great purpose. May they
10 follow thy commandments and abide in thy law. Help them, o god, in their endeavor, and
11 grant them strength to serve thee. O god, leave them not to themselves, but guide their
12 steps by the light of thy knowledge, and cheer their hearts by thy love. Verily, thou art their
13 helper and their lord. Thank you.

14
15 COUNCIL PRESIDENT FLOREEN:

16 Thank you. First on our agenda, we have a presentation by Council Vice President Ervin
17 in recognition of Montgomery College's Susan Bontems for being named Maryland
18 Professor of the Year by the Carnegie Foundation for the Advancement of Teaching.
19 Congratulations, Miss Bontems.

20
21 COUNCIL VICE PRESIDENT ERVIN:

22 Good afternoon. If Susan is in the audience, if she would step forward, please? It's good
23 to be back. It's our first day back in session after a nice break over the Christmas holiday,
24 and we are very, very excited about presenting this proclamation to Ms. Bontems.
25 Montgomery College is ranked in the top 10 of all community colleges in the nation, and
26 we're going to present this proclamation now to one of the reasons why we're so proud of
27 Montgomery College, and Professor Bontems, we're meeting for the first time.
28 Congratulations on your great accomplishment. Teaching is truly a passion for Professor
29 Bontems, who teaches chemistry at Montgomery College in Germantown. She was
30 recently named Maryland Professor of the Year by the Carnegie Foundation, and the
31 County Council would like to take this opportunity to recognize her today for this
32 achievement. Professor Bontems worked in the chemical industry for 9 years before
33 joining the staff at Montgomery College as an adjunct professor. It was then that she
34 realized that teaching was always something she meant to do, and in 2002, she became a
35 full-time professor. She considers her biggest achievement to be the success of her
36 students, who continue on--many of whom continue on to 4-year colleges and then to
37 medical, pharmacy, nursing, and dental schools. Professor Bontems is a shining example
38 of the great faculty members who teach at Montgomery College, and I want to thank her
39 and all of the faculty at the college for helping our students to succeed. And so at this
40 time, I would like to present you, professor, with a proclamation, which I'll read now on
41 behalf of the County Council. "Whereas, Susan Bontems, a Montgomery College
42 chemistry professor, has been named 2009 Maryland Professor of the Year by the



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1 Carnegie Foundation for the Advancement of Teaching and the Council for the
2 Advancement and Support of Education, the largest international association of education
3 institutions; and whereas, the U.S. Professors of the Year program salutes the
4 outstanding undergraduate instructors in the country--those who excel as teachers and
5 influence the lives and careers of their students, and the award is recognized among the
6 most prestigious ones honoring professors; and whereas, Professor Bontems has
7 encouraged the Germantown campus chemistry department to offer Honors courses, has
8 worked with a colleague to develop and implement a seminar-style Honors module for
9 organic chemistry, and has coauthored laboratory manuals for organic labs to improve
10 student understanding and safety"--excuse me. Ahem. "And whereas, Professor Bontems
11 has been described as a skillful, enthusiastic, innovative, and engaged teacher who is
12 focused on student learning and serves as a model master teacher and who encourages
13 curiosity and understanding in her students; and whereas, Susan Bontems exemplifies
14 how teachers who are committed to academic excellence can open the doors of success
15 for young people, and the Montgomery County Council takes pride in her achievements
16 and the great honor she has brought to her County; now, therefore, be it resolved that the
17 Montgomery County Council of Montgomery County, Maryland, hereby proclaims
18 congratulations to Professor Susan Bontems for being named 2009 Maryland Professor of
19 the Year by the Carnegie Foundation." Signed this 12th day of January in the year 2010,
20 signed by Council President Nancy Floreen. Congratulations.

21
22 SUSAN BONTEMS:

23 Thank you very much.

24
25 COUNCIL VICE PRESIDENT ERVIN:

26 So we will ask you, professor, if you'd like to say a few words.

27
28 SUSAN BONTEMS:

29 Do you--do you want a chemistry lecture, or...

30
31 COUNCIL VICE PRESIDENT ERVIN:

32 Oh, no, no. No chemistry lecture.

33
34 SUSAN BONTEMS:

35 Thank you very much. I would like to thank you very much for the honor, and certainly it's
36 an incredible honor to be here, and I'd like to thank my colleagues and Montgomery
37 College. I love teaching there, and it's a great place to work. Thank you.

38
39 COUNCIL VICE PRESIDENT ERVIN:

40 Great. Thank you so much, and would you like to say anything, professor--or what is your
41 new role now? You have a new title.



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1 SANJAY RAI:

2 I'm interim vice president and provost for our Germantown campus. I want to thank
3 Councilmember Valerie Ervin and the whole County Council for recognizing Professor
4 Bontems on this extraordinary achievement. And when we say Montgomery College is a
5 top 10 community college in the nation, we are there because of professors like Professor
6 Bontems. Thank you again. Thank you.

7
8 COUNCIL VICE PRESIDENT ERVIN:

9 Thank you so much. And we're going to take a lot of pictures.

10
11 COUNCIL PRESIDENT FLOREEN:

12 Congratulations. Thanks.

13
14 COUNCIL VICE PRESIDENT ERVIN:

15 Congratulations. So...let me move this out of the way.

16
17 NEIL GREENBERGER:

18 Please hold up your copy. We're going to take several pictures. Please smile for all of
19 them. OK. A couple more. Just look right at me. Great. Thank you.

20
21 COUNCIL VICE PRESIDENT ERVIN:

22 Thank you again, and congratulations.

23
24 COUNCIL PRESIDENT FLOREEN:

25 Congratulations. Council Vice President Ervin, if you wouldn't mind staying there for
26 another moment. We're going to do something a little bit out of the ordinary. In November,
27 we--as everybody knows, we had a terrible problem with our traffic light system. And the
28 public was very involved and concerned and frustrated. That was nowhere near the
29 frustration and the challenge performed, met, and overcome by County staff. So we're
30 going to--Miss Ervin and I are going to recognize the Department of Transportation
31 director, Art Holmes, Al Roshdieh, Emil Wolanin, Mike Kinney, John Riehl, Scott Myers,
32 and Bob Ricketts. Could you all come up? We know this was not an easy task, and
33 public's frustration was really addressed with tremendous work, energy, and collaboration
34 by County staff and our private sector partners. So if I could ask Council Vice President
35 Ervin to join me with this proclamation and read it. "Whereas, Montgomery County's
36 Division of Traffic Engineering and Operations' mission is to provide a safe and efficient
37 transportation system, and..."

38
39 COUNCIL VICE PRESIDENT ERVIN:

40 "Since 1981, DTEO has utilized a computerized traffic signal system to manage the flow
41 of traffic on all roads in the County, and..."



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1 COUNCIL PRESIDENT FLOREEN:

2 "Whereas, the central computer that controls the nearly 800 traffic signals in the County
3 experienced a catastrophic failure on November 4, 2009, causing massive rush hour
4 traffic problems on roads throughout the County; and..."

6 COUNCIL VICE PRESIDENT ERVIN:

7 "DTEO staff, along with the support of Siemens and Park Place International, worked
8 tirelessly to troubleshoot the source of the failure and to restore the aging system to
9 working condition, as well as manually adjust signal timings at many intersections to
10 facilitate the flow of traffic as best as possible."

12 COUNCIL PRESIDENT FLOREEN:

13 "And DTEO staff also coordinated with various government agencies such as the County
14 Executive's office, County police, Department of Technology Services, and Maryland
15 State Highway Administration to address the many issues that arose during this event..."

17 COUNCIL VICE PRESIDENT ERVIN:

18 "And whereas, DTEO has developed contingency plans to minimize the likelihood of a
19 similar system failure and has also implemented backup signal timings at local
20 intersections..."

22 COUNCIL PRESIDENT FLOREEN:

23 "And now, therefore, be it resolved that the County Council of Montgomery County,
24 Maryland, hereby recognizes the office of Montgomery County's Department of
25 Transportation's Division of Traffic Engineering and Operations for the exemplary and
26 outstanding service under extreme conditions in responding to the traffic signal failure on
27 November 4 and 5, 2009." Presented this 12th day of January in the year 2010. So, thank
28 you very much, gentlemen. We know it was tough. We know it's never going to happen
29 again. Right?

31 COUNCIL VICE PRESIDENT ERVIN:

32 We're going to have Director Holmes speak.

34 ART HOLMES:

35 Just a couple of words. I want to thank the president and vice president of the Council and
36 each Councilmember for this recognition of some very hard, smart work on the part of
37 individuals in the Traffic Engineering section. This is an antiquated system, but they went
38 to the task and looked at the fault, found the fault, and then repaired the fault, and for that,
39 I'm very happy to be a part of their team. Thank you very much.

41 COUNCIL PRESIDENT FLOREEN:

42 Anyone else? Why don't we have a photo? You need to hold the proclamation there.



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ART HOLMES:

Why don't you hold the proclamation? You hold the proclamation.

NEIL GREENBERGER:

Let's get a little closer together. There we go. A couple more. Keep smiling. Everybody give me one good smile. Looks good. Thank you.

COUNCIL PRESIDENT FLOREEN:

OK. Thank you very much. All righty. On to general business. Miss Lauer.

LINDA LAUER:

Hi. The general business--today we have the announcement of two public hearings coming up here in the next couple of weeks: a public hearing on February 2 at 1:30 on the Spending Affordability Guidelines for the FY11 Operating Budget. The public hearing dates for the Capital Improvements Program will be February 9, 10, and 11 at 7 P.M. Today's agenda--we do have a couple of changes. The Consent Calendar, two items are deferred. Agenda Item F, which is--pertains to the County employee group insurance plans--that item is deferred. The--and then G, Resolution to approve the closure of pedestrian tunnel under Stedwick Road in Gaithersburg --that item is deferred. And then one correction to the public hearing on Bill 42-09, Common Ownership Communities. That--I just want to correct it. It will go to the Public Safety Committee at a future date. And then--

COUNCIL PRESIDENT FLOREEN:

Thank you, Miss Lauer.

LINDA LAUER:

And then we did receive a number of petitions during the recess. We received one each--one opposing and another supporting the requirements for the disclaimer for the Pregnancy Resource Centers, one on supporting the full funding of the libraries budget, one supporting a pedestrian bridge for the Silver Spring Library, and then finally, one supporting the Suburban Hospital's campus enhancement project. Thank you.

COUNCIL PRESIDENT FLOREEN:

Thank you very much, Miss Lauer. We have minutes of December 1. Is there a motion for approval?

COUNCIL VICE PRESIDENT ERVIN:

Move approval.

COUNCIL PRESIDENT FLOREEN:



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1 Moved by Councilmember Ervin. Seconded by Councilmember Trachtenberg. All in favor,
2 please signal by raising your hands. OK. Everyone is with us. That's unanimous. Thank
3 you very much. On to the Consent Calendar. Is there--as amended.

4
5 COUNCILMEMBER KNAPP:
6 Move approval.

7
8 COUNCIL PRESIDENT FLOREEN:
9 Is there a motion--

10
11 COUNCIL VICE PRESIDENT ERVIN:
12 Second.

13
14 COUNCIL PRESIDENT FLOREEN:
15 Moved by Councilmember Knapp and seconded by Councilmember Ervin. All in favor of
16 approving the Consent Calendar? That is again unanimous. Thank you very much. And
17 there were no comments on that. OK. Then we'll move on to the public hearing. Let's see
18 here. The first item is public hearing on--this is a public hearing on ZTA 09-11, Residential
19 Zones - Agricultural Vending. This would allow what most residents would call farmers
20 markets on larger parcels of land adjacent to major roads if the lot is otherwise used for
21 nonresidential purposes. A PHED Committee worksession on this ZTA is tentatively
22 scheduled for Thursday, January 21, at 9:30 A.M., and persons wishing to submit
23 additional material for the Council's consideration should do so before the close of
24 business on Wednesday, January 13. And we have Greg Russ from the Montgomery
25 County Planning Board, Edward Rankin from Twin Spring Fruit Farm--Mr. Rankin, are you
26 here? And Jim Heller from Concord Street Andrews United Methodist Church. Come on
27 up. Thank you. And, Mr. Russ.

28
29 GREG RUSS:
30 Thank you, Council President Floreen. For the record, Greg Russ from Montgomery
31 County Planning Board. The Planning Board reviewed this ZTA at its regular meeting on
32 January 7. After careful review of the material of record, the board voted unanimously to
33 provide the following comments. Overall, the board supports providing opportunities for
34 vending of farm products near residential areas. The proposed text amendment would
35 allow what residents might typically refer to as farmers markets to be established as
36 agricultural vending with somewhat broader application, in that they could be established
37 in most one-family residential zones if located on a lot or a parcel greater than 4 acres that
38 is also used for nonresidential purposes other than agricultural vending, the lot or parcel
39 abuts a roadway with 4 or more lanes, and the structure or vehicle used for sales remains
40 in the same location for less than 24 hours. The board believes that the parameters
41 proposed for the establishment of agricultural vending help to mitigate some possible
42 adverse impacts on surrounding residential development. However, the board is



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1 concerned that the broadening of the farm market provisions in one-family residential
2 zones could have far more--have more far-reaching impacts than anticipated by the
3 sponsor and therefore should be addressed more comprehensively as part of the Zoning
4 Ordinance Rewrite Project. For example, the board is concerned that requiring the
5 location of agricultural vending on lots or parcels greater than 4 acres could potentially
6 result in a larger scale of farm produce vending that is out of character with the
7 surrounding neighborhoods. The Planning Board also questioned how the process would
8 be handled for allowing agricultural vending by right on non-residentially-used parcels
9 where the existing use is governed by a special exception. That's the end of my--my
10 presentation on this ZTA. I'm also speaking on the second one, so I-- I don't know if you--

11
12 COUNCIL PRESIDENT FLOREEN:
13 You have 5 minutes altogether.

14
15 GREG RUSS:
16 OK. Should I--

17
18 COUNCIL PRESIDENT FLOREEN:
19 Sure. Go for it.

20
21 GREG RUSS:
22 OK. Great. The second ZTA, which is ZTA 09-12, was also reviewed by the Planning
23 Board on January 7. The board unanimously recommends approval of this text
24 amendment as introduced. This text amendment proposes to amend the zoning ordinance
25 to allow parcels in the Rural Service Zone with less than the 300-foot road frontage
26 requirement to develop with the frontage that existed when the RS Zone was applied. The
27 sponsor believes this grandfathering provision was mistakenly omitted when the RS Zone
28 was first established. The board agrees with the sponsor of the text amendment that this
29 provision was omitted inadvertently. I'd be happy to answer any questions.

30
31 COUNCIL PRESIDENT FLOREEN:
32 Thank you, Mr. Russ. Mr. Rankin. Press your button there. There you go.

33
34 EDWARD RANKIN:
35 Thank you. I appreciate being able to speak to you about this. Thank you for the
36 opportunity to share some information with you on behalf of my partners at Twin Springs
37 Fruit Farm, located in Orrtanna, Pennsylvania. We've been coming to Concord-St.
38 Andrews Methodist Church for about 20 years, providing fresh-picked vegetables and
39 fruits to the residents of the area. The generosity of parishes such as Concord-St.
40 Andrews is one of the reasons for the survival of small farms such as ours. In return, we
41 commit a percentage of our sales to provide a reliable source of income for the church.
42 We are also a source of employment for local residents on both a year-round and part-



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1 time basis. That number varies depending on the time of year. Over 1,000 local customers
2 who would have been affected by the market's closing signed a petition supporting
3 retention and expressed their appreciation not only for the quality of our produce, but also
4 for the opportunity the market provides as a center for social interaction. We hope to
5 continue serving our loyal customers and thank everyone whose efforts, thoughts, and
6 time have contributed to the updated ordinance now being considered. We appreciate the
7 opportunity to submit this information for you today.

8
9 COUNCIL PRESIDENT FLOREEN:

10 Thank you, Mr. Rankin. Mr. Heller.

11
12 JIM HELLER:

13 Good morning, Chairman. How are you? Thank you, members of the Council, in advance,
14 for your support of the ZTA 09-11, creating agricultural vending in residential zones for
15 nonprofits. For the record, the amendment was created to help us continue the operation
16 of the Twin Springs farm market at Concord-St. Andrews property. It's been operating
17 under an exception called a Regular Route, but a complaint led us to realize we were in
18 zoning violation. We thank Chairman Berliner's office for helping us get this on the docket
19 for the County, and I see no rational reason not to continue operation. I've printed up a
20 Google Maps picture here, and if you look at it, it shows the offset from the property. It
21 tells you exactly where it's located and the fact that there would be no parking issues.
22 Beyond that, as was cited by Mr. Rankin, the church derives between 8% and 14% of our
23 annual operating budget there, which allows us to provide for 12-step recovery programs,
24 our cooperative nursery school which exists there; we also house many community
25 groups on their regular meetings, including Boy Scouts and other opportunities. As Mr.
26 Rankin cited, the market has been there for many years-- he said over 20--and it's a
27 community event. We had a very successful petition drive, and there's a sense of
28 togetherness that must be observed. I invite any of you to come down tomorrow to the
29 church and see the community that's there and to experience the social interaction in
30 person. I think you would be wise to see that. Additionally, the community is supplied with
31 a valuable source of pesticide-free and home-grown produce. This long-term event really
32 is mirroring the macro trends in the country and provides us for an experience for our
33 children to learn how food is created. I just look at the First Lady right now and what she is
34 championing with farm and local produce, and it's a good thing, so... I want to read you a
35 quick quote from one of the members there, and I have a minute left, so I'll try and get it
36 in. "My 3-year-old son attends the nursery school there and we have a wonderful tradition
37 of going to the market after school. He looks forward to it very much. He is thrilled when
38 we drive into the parking lot and we see people setting up the market in the morning. One
39 day when we were in a big hurry after school, I was rushing him and thought we would not
40 have time to stop. I'm embarrassed to admit that I offered to bribe him with McDonald's
41 Happy Meal to get his mind off the market. He pleaded with me, 'Mom, I don't want a
42 Happy Meal. I want to go to the Fruit Stand. Please.' That really stopped me in my tracks



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1 and made me think about my priorities. That he would prefer the fruit stand as opposed to
2 the French fries and chicken nuggets made me realize how important Twin Springs is to
3 him. There's something beautiful about being close to locally grown produce--seeing the
4 colors, sampling the taste, holding the freshness in our hands, and my young son has
5 learned to appreciate it as much as I had." There's more to this quote, and there's other
6 quotes in here from people. I urge your support, and I thank you in advance for your
7 consideration.

8
9 COUNCIL PRESIDENT FLOREEN:

10 Thank you very much. Councilmember Berliner, are you trying to say something here?

11
12 COUNCILMEMBER BERLINER:

13 I'm trying to say something. I'm pushing the wrong buttons. One, let me thank you for your
14 --all of you for your testimony, except, you know, Mr. Russ, I'll only thank you a little bit. I
15 thank you for your staff report and look forward to working with the chair and the members
16 of the PHED Committee in addressing the board's concerns because I do believe there's
17 great support for this. I appreciate the board's desire, also, to ensure that these kinds of
18 farmers markets continue, and as I am sure the board appreciates, in the absence of this
19 legislation, that will not happen. And so the notion that we could wait until we get the zone
20 rewrite is simply a nonstarter. So if there are specific ways in which we can tweak this
21 legislation to address their concerns, please share with the chairman and others my
22 desire to work with them in that regard, because this Councilmember's commitment is to
23 make sure that this operation continues and operations of this nature continue.

24
25 COUNCIL PRESIDENT FLOREEN:

26 Thank you, Mr. Berliner. Mr. Leventhal.

27
28 COUNCILMEMBER LEVENTHAL:

29 Mr. Rankin, do you take credit cards at the fruit stand or just cash?

30
31 EDWARD RANKIN:

32 We do take credit cards, yes.

33
34 COUNCILMEMBER LEVENTHAL:

35 Have you ever looked into--I'm going to assume that you don't take the electronic benefit
36 transfer for food stamps. Have you ever looked into doing that?

37
38 EDWARD RANKIN:

39 We have not done that, no. I'm actually the wrong person to give you the answer as to
40 whether we've looked into that. I would guess that we have, because we have done that, I
41 believe, in Virginia markets, but I'm--I'm not sure. I could find out and get back to you on
42 that.



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1
2 COUNCILMEMBER LEVENTHAL:

3 I'd be delighted to know. I'm very interested in that and how County government can help
4 facilitate that. I think the benefit of fresh produce for people in every demographic group is
5 very high, and I'm most interested in pursuing that issue.

6
7 EDWARD RANKIN:

8 Thank you.
9

10 COUNCIL PRESIDENT FLOREEN:

11 OK. Mr. Zyontz, when you bring this to the PHED Committee, I wonder if you could
12 address a couple of my questions, which are, I'm aware of many farm markets in the
13 County, and I'm not sure how many of them would satisfy these requirements. I doubt
14 most of the ones I know about would. And so I would like to understand the implication of
15 this for the myriad of other farm markets that are on public roads and in different
16 communities and parking lots and in a variety of locations throughout the County. Would
17 this be the only way that you could have a farm market-- farm market? So if you could
18 bring that to us when we take it up, I'd appreciate it. OK. Thank you very much, folks.
19

20 JIM HELLER:

21 Thank you.
22

23 COUNCIL PRESIDENT FLOREEN:

24 And the next item on the agenda is public hearing on Zoning Text Amendment 09-12,
25 Rural Service Zone - Development Standards. This ZTA would allow parcels in the Rural
26 Service Zone with less than 300 feet of road frontage to develop with the frontage that
27 existed when the Rural Service Zone was applied. A PHED Committee worksession on
28 this ZTA is tentatively scheduled for Thursday, January 21, 2010 at 9:30 A.M. Persons
29 wishing to submit additional material for the Council's consideration should do so before
30 the close of business on Wednesday, January 13. Mr. Russ, we've heard from you, and
31 on to Mr. Kline.
32

33 JODY KLINE:

34 Good afternoon. For the record, my name is Jody Kline. I'm an attorney with the law firm
35 of Miller, Miller & Canby law offices here in Rockville at 200-B Monroe Street, but I'm sort
36 of the junior varsity here today, since Sue Carter in my office is actually the primary mover
37 of this text amendment, and only hospitalization is keeping her from being here today.
38

39 COUNCIL PRESIDENT FLOREEN:

40 Oh, dear.
41

42 JODY KLINE:



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1 She's OK.

2
3 COUNCIL PRESIDENT FLOREEN:

4 Please convey our concern to her.

5
6 JODY KLINE:

7 Thank you. Mr. Russ has really kind of hit the essence of this. Somehow, there was an
8 oversight in 1994 that allowed these certain properties that did not meet the dimensional
9 standards of the new Rural Services Zone to be able to move forward, and the text
10 amendment that was sent up to create the zone did have, I believe the Planning Board
11 thought, a grandfather provision. It was found in footnote number 4. It's always hard to
12 prove a negative, but I can tell you that we have scoured your files for the original RS
13 Zoning ordinance text amendment and can't find the reason why the area requirement
14 was picked up in the footnote but the frontage requirement was not, and our client,
15 unfortunately, has less than 300 feet and can't develop his property. As I said, I know it's
16 hard to prove a negative, but I--what I brought with me is an excerpt from the text of the
17 1994 Council hearing. Mr. Dennis Canavan, a very well respected planner, was speaking
18 on behalf of the Planning Board, and his testimony was, "The standards of the
19 development of this zone will be a 2-acre minimum lot size and 300 feet of road frontage.
20 We recognize that if this zone is applied to a strip of land along the I-270 corridor, that the
21 potential is there for setting up a nonconforming status, and that was not our intent.
22 Therefore, we must apply grandfather language, and we feel that we have done so to
23 address those issues." I would acknowledge that the transmittal could have left somebody
24 with confusion that taking care of the area requirements would be enough to address
25 everything, but in fact, by leaving out the 300-foot frontage requirements, it left certain
26 properties in the RS Zone unable to be developed, and in our client's case, we cannot get
27 subdivision approval to build on the property without the text amendment. I believe the--I
28 was going to say "the record's clear," but I guess the record is not clear or we wouldn't be
29 here, but suffice it to say there's nothing in the file where any Council member or any staff
30 member said, "We shouldn't have a footnote that covers both nonconforming potentials,"
31 and this text amendment will cure that and allow certain properties to go forward in
32 development, as I think was originally intended. Thank you.

33
34 COUNCIL PRESIDENT FLOREEN:

35 Thank you very much, Mr. Kline. I don't see any questions. Thank you both, gentlemen.
36 Next item on the agenda is Expedited Bill 41-09 - Taxation - Property Tax Credit -
37 Business Incubator. This bill would create a property tax credit for property used as a
38 publicly sponsored business incubator. A Management and Fiscal Policy Committee
39 worksession is tentatively scheduled for Monday, January 25, 2010, at 2 P.M., and
40 persons wishing to submit additional material for the Council's consideration should do so
41 before the close of business on Thursday, January 21. And for our speaker of the



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1 afternoon on this matter would be Mr. Steve Silverman, director of the Department of
2 Economic Development-- with fresh wounds.

3
4 STEVE SILVERMAN:

5 Thank you, Madame President. Great to see you all again. Good afternoon. For the
6 record, my name is Steve Silverman, director of the Department of Economic
7 Development. I'm not going to read my written testimony, which we've submitted. This is
8 to address a challenge that came about based on an attorney general's opinion in 2005
9 basically saying that government property leased to an incubator business is taxable to
10 the business owner, since the tenants of our incubator system, the businesses, are in fact
11 for-profit businesses. So SDAT is assessing property taxes on, and can, on all 5 of our
12 incubators. So this legislation is designed to avoid what amounts to a bureaucratic
13 process where we would turn around and have to pay property taxes, and then we would
14 be coming back to the Council to ask for an appropriation to pay those property taxes,
15 which just creates a lot of staff time and bureaucracy. The key thing is, from Joe Beach, is
16 adoption of this bill will not have an adverse fiscal impact on the County, since the amount
17 of the credit does not impact the amount of revenues that can be collected under the
18 Charter Limit. So it's basically a wash. On behalf of the County Executive, we hope the
19 Council will look favorably upon this accounting challenge.

20
21 COUNCIL PRESIDENT FLOREEN:

22 I'm sure we will give it due consideration, Mr. Silverman.

23
24 STEVE SILVERMAN:

25 Thank you.

26
27 COUNCIL PRESIDENT FLOREEN:

28 Thank you very much. We'll move on to our next item, agenda item number 6. This is a
29 public hearing on Bill 42-09, Common Ownership Communities - Dispute Resolution. The
30 bill would modify the composition of the Commission on Common Ownership
31 Communities, subject community associations to certain annual notification requirements,
32 make certain types of complaints subject to dispute resolution through administrative
33 hearings by the Commission, establish a special panel with authority to lift the automatic
34 stay imposed when a dispute is filed with the Commission, and generally revise County
35 law regarding common ownership communities. Public Safety Committee worksession will
36 be scheduled at a later date, and persons wishing to submit additional material for the
37 Council's consideration should do so before the close of business on Friday, January 29.
38 We have 6 speakers for this matter:
39 Eric Friedman for the County Executive; Charles Fleischer, speaking for the Commission
40 on Common Ownership Communities; Jeremy Tucker, Community Associates Institute;
41 John Williams from University Towers; Kathleen Thomas, Top of the Park Condominiums;



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1 and Christopher Hitchens, an individual. Thank you all for joining us this afternoon. Mr.
2 Friedman.

3
4 ERIC FRIEDMAN:

5 Good afternoon. For the record, I'm Eric Friedman, director of the Office of Consumer
6 Protection. On behalf of the County Executive, I want to thank former Council President
7 Andrews for sponsoring Bill 42-09 and the entire Council for its consideration of the bill.
8 Bill 42-09 originated with the Commission on Common Ownership Communities--CCOC--
9 which worked with our staff and the County Attorney's Office to address issues that have
10 arisen in nearly two decades that Chapter 10B of the County Code has been in effect. The
11 CCOC consulted constituent groups, such as the Maryland Homeowners Association and
12 the Washington Metropolitan chapter of Community Associations Institute--CAI. Indeed,
13 the bill contains several changes suggested by CAI to earlier drafts. While the bill would
14 make some important changes in Chapter 10B, we don't believe it can be characterized
15 as a major rewrite of the chapter. The core of the bill is a moderate expansion in the types
16 of disputes over which the CCOC has jurisdiction. To put these changes in context, I'll
17 briefly review the CCOC's complaint process. Filed complaints first go through a mediation
18 phase, in which our staff forwards the complaint to other parties for a written response and
19 assists the parties in trying to reach a resolution. If we are unsuccessful in bringing about
20 a resolution, the parties are strongly encouraged to go to formal mediation conducted by
21 two trained mediators of the Conflict Resolution Center of Montgomery County.
22 Approximately 60% of filed cases are resolved at some point during the mediation phase.
23 Those remaining unresolved are submitted to the CCOC at one of the monthly meetings.
24 The CCOC determines if the case falls within one of the definitions of dispute over which it
25 is given jurisdiction by Section 10B-8(3). If it is accepted for jurisdiction, a hearing is
26 scheduled. In the early 2000s, the commission decided that it did not have jurisdiction
27 over approximately 4% of the complaints that went beyond the mediation stage. That
28 percentage is up to approximately 35% of the past --over the past two years. We believe
29 that this increase is due to changes in the types of complaints filed and the commission's
30 conservative interpretation of the term "dispute" in Chapter 10B. Bill 42-09 would expand
31 one category of dispute and create two new ones. Those two new categories are narrowly
32 drafted to cover particular situations. One would give the CCOC jurisdiction over
33 complaints about an association's failure to maintain or repair common elements, but only
34 when the repair or maintenance is required by law or an association document. Had the
35 bill been in effect over the last two years, we believe the number of cases in which the
36 commission decided that it did not have jurisdiction would have been reduced, but far from
37 eliminated. The CCOC's educational efforts would be enhanced by the bill's requirement
38 that a community association provide its member information on the commission's
39 services. Our office will make available written materials that can be used in providing that
40 notice. The bill also makes straightforward and hopefully noncontroversial changes in the
41 composition of the commission and the automatic stay. We look forward to assisting the
42 Council and staff in their consideration of this legislation.



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1
2 COUNCIL PRESIDENT FLOREEN:

3 Thank you, Mr. Friedman. Mr. Fleischer.
4

5 CHARLES FLEISCHER:

6 Thank you, Madame President. My name is Charles Fleischer, and I am pleased to be
7 speaking on behalf of the Commission on Common Ownership Communities. Perhaps I
8 bring a unique perspective to this bill because I have had the privilege of serving for two
9 full terms on the commission. I'm also an attorney, and I have had the privilege of serving
10 as panel chair a number of times and writing a number of opinions. The commission, with
11 the help of staff and the County Attorney's Office, has worked for well over a year in
12 developing the bill. Most of the changes grew out of the commission's hands-on
13 experience in dealing with disputes. The changes will clarify the commission's jurisdiction
14 and allow the commission to get on with the business of resolving disputes, instead of
15 wrestling with the issue of whether we do have jurisdiction. I would like to focus on two
16 specific changes the bill would make. One begins on line 64 of the bill. This is a new
17 provision that would authorize the commission to hear disputes involving the failure of a
18 governing body to require a homeowner to comply with association rules. And I'd like to
19 give a specific example of an--of an actual case. A row of townhouse condominiums had
20 a--had a swale running behind them for drainage of storm water. The downhill unit owner
21 added some landscaping features in violation of the condo's covenants, and the
22 association should have required the downhill owner to remove or modify the features, but
23 it didn't, so every time it rained hard, an uphill owner's back yard and basement flooded.
24 Under the existing law, the commission's jurisdiction to hear that kind of a dispute is
25 doubtful. Bill 42-09 would make it clear that the commission could take that case, and in
26 my view, that makes good sense. Otherwise, the unit owner would have to incur the
27 expense and formality of court proceedings. And I also call the Council's attention to the
28 preamble of the existing statute, which finds that an unequal bargaining power between
29 associations and unit owners is really the reason for the-- for the bill in the first place.
30 Clarifying the commission's jurisdiction in this area would further the underlying purposes
31 of the statute. Another substantive provision begins at line 62, and this would give the
32 commission authority to hear a claim that an association failed to maintain or repair a
33 common element if the failure resulted in damage or injury to the unit owner or tenant. The
34 commission does not want to second-guess an association's decision whether, for
35 example, to replace the roof this year or next. In fact, that is not within the commission's
36 jurisdiction. But suppose the roof has been leaking for years. It has caused property
37 damage within the unit. Mold has grown. We think the commission should be able to take
38 that kind of a case, as well. I thank you for this opportunity to testify.
39

40 COUNCIL PRESIDENT FLOREEN:

41 Thank you, Mr. Fleischer, and thank you for your service on the commission. We're very
42 grateful to you. Next we have Jeremy Tucker.



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JEREMY TUCKER:

Thank you. For the record, my name is Jeremy Tucker. I am here today on behalf of the Maryland Legislative Committee of the Washington Metropolitan chapter of CAI. Just a little background--CAI serves the educational, business, and networking needs of community associations and owner members within community associations throughout Maryland, Virginia, and the D.C. The Washington Metro chapter is the largest one in the country. My committee is focused on local legislation within the metropolitan counties--Montgomery, Prince George's, and Howard County, as well as Charles County from time to time. When this legislation came forward to us, we have worked pretty consistently over the last year and a half with the County staff, or the CCOC staff, and the County Executive's office to hear our concerns, and we would like to thank CCOC for responding and addressing numerous ones of-- numerous of our concerns. There still remains a few outstanding issues, and I wish to highlight only two of them today. I've submitted written testimony for the rest of the other ones. One of the main ones deals with what Mr. Fleischer was talking about, was the expansion of the jurisdictional determination to cover disputes that require any person who is subject to the association's governing documents to comply with the documents--in other words, bringing suit against an association for failing to enforce the governing documents. Mr. Fleischer's example is a worst-case scenario. What we foresee this being is, a condominium doesn't take action to stop a noise violation when complained against. All of a sudden, they can bring a suit to say, "You didn't stop that noise." Those type of decisions-- whether to take action, whether not to take action--go to the heart of what is called the Business Judgment Rule, which Maryland Court of Appeals has said judicial bodies are prohibited from reviewing. In other words, absent fraud or bad faith, no judicial body is allowed to review the business-making decision of a board of directors. They chose to enforce, they chose not to enforce. They chose to take "X" action, they chose to take "Y" action. Absent fraud or misdealing, it is not appropriate for the commission--or, for that matter, for the Circuit Court --to review that decisionmaking. The other major issue--and we spent some time talking to CCOC staff about this--is sort of the process, the procedures of when a case is filed to when jurisdictional determination is made. There is what we like to sort of consider strongly encouraged mediation after a complaint is filed. An owner files a complaint against an association. We are--the association, who I primarily represent--is required to essentially go to mediation. Some 3 to 4 months later, a jurisdictional determination is made. What we are hoping for, and what we've submitted in written testimony, is including a motion-to-dismiss procedure before the jurisdictional determination and after the jurisdictional determination phase. We've met with staff, and they've indicated they would support such an additional thing. Makes sense. Sometimes the commission gets it wrong. We'd like to be able to have that reviewed before 6-- another 3 months before a panel. I thank you for your time.

COUNCIL PRESIDENT FLOREEN:



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1 Thank you. Mr. Williams, University Towers.

2
3 JOHN WILLIAMS:

4 My name is John Williams. I'm the--

5
6 COUNCIL PRESIDENT FLOREEN:

7 Press your button there, sir.

8
9 JOHN WILLIAMS:

10 Thank you.

11
12 COUNCIL PRESIDENT FLOREEN:

13 There you go.

14
15 JOHN WILLIAMS:

16 My name is John Williams. I'm the former president of University Towers. Thank you for
17 the opportunity of coming here today to make a suggestion with regard to an improvement
18 in the process, by which the commission may work with boards of directors of such
19 homeowner associations as University Towers. Specifically, I am addressing the manner
20 in which the commission accepts complaints from members of an association. When a
21 homeowner in an association has a complaint, he has to go through a process at the
22 community level to resolve those complaints. We have a very good process at University
23 Towers. The complainant goes to the manager, the community agent, then to the board,
24 and if not resolved there, to a governance committee, which is non-board members. Only
25 then should, if the dispute continues, should it go on to a formal complaint. In fact, this
26 process--a process such as that would work to resolve many disputes and supports the
27 community governance and lowers tensions within the community. However, all the
28 complaints that came while I was on the board of directors ignored this process, although
29 they did not say so in their complaint form. The very first that the board of directors heard
30 of these complaints was a letter from the commission informing us that there was a formal
31 complaint. This is not the way that the process is supposed to work. It undermines the
32 community governance, hardens the positions at the very outset, and results in complaints
33 that should not have been filed in the first place. As an example, one complainant
34 complained that the board of directors had improperly used its authority to accept a \$1.9
35 million contract for pipe repairs, with the argument that the improvements constituted an
36 improvement that required a 2/3 vote of the owners. A repair does not require such a vote.
37 The board first heard of this complaint in a letter from the commission. Two days later, the
38 complainant posted 30 notices, at every elevator in the building, stating that the
39 Department of Consumer Affairs of Montgomery County was investigating the
40 misappropriation of funds by the board of directors and that residents should not pay their
41 assessments. This kind of process does not help community governance. After mediation
42 and a hearing, this complaint was resolved in the favor of the association. However, the



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1 acceptance of the complaint after half of the repair had been completed stayed all further
2 repair work for many months and cost the association tens of thousands of dollars. The
3 lesson:

4 it would be helpful if the CCOC were to respect and enable the communities' own dispute-
5 resolution mechanisms, which are stipulated both in Maryland condominium law and in
6 University Towers' own governing documents. Before it accepts a complaint, it could
7 determine if in fact the community had the opportunity to deal with the complaint. We
8 noted in our response in each complaint that the complaint had bypassed the community
9 process. This part of our response was ignored in every single case. It would have been
10 helpful if the complaint had been remanded to the community to their own dispute
11 resolution prior to the stay by the commission. Thank you very much.

12
13 COUNCIL PRESIDENT FLOREEN:

14 Thank you very much, Mr. Williams. Ms. Thomas.

15
16 KATHLEEN THOMAS:

17 Good afternoon.

18
19 COUNCIL PRESIDENT FLOREEN:

20 Press your button there. There you go.

21
22 KATHLEEN THOMAS:

23 Good afternoon. I'm Kathy Thomas. I'm representing Top of the Park Condominium, a
24 166-unit townhouse development just north of downtown Silver Spring. I'm a prior board
25 member with firsthand experience in dealing with the CCOC resolution process, and in
26 representing the board, I'm expressing our board's concern about expanding the CCOC's
27 authority, since we found that resolution process to be expensive and unproductive. We
28 first of all don't see the need to expand the jurisdiction. You heard from Mr. Friedman that
29 35% of all cases are denied jurisdiction. Sounds impressive. But when I spoke to the
30 CCOC staff yesterday, I learned that of the 84 cases that were resolved last year, only 9
31 were dismissed for lack of jurisdiction, and these amendments would only increase
32 jurisdiction over only two or 3 of them. We also don't see any widespread outcry to expand
33 the --the commission's authority on the part of other condominium residents and
34 homeowners or co-op association residents, so we're really not sure why there's a reason
35 to do this. We're also concerned about the vagueness of expanding the complaint process
36 to include the need to maintain the common elements. You already heard that that
37 impedes upon the business judgment, and frankly, every condominium document has that
38 broad language that says that the condo--that the association should uphold the common
39 elements. Now an aggrieved resident has a forum that they can now question the
40 business judgment of an association. But we're especially concerned about the need--
41 about the requirement that residents be informed about the CCOC availability. It has been
42 our experience that that kind of awareness only increases the likelihood of complaint. We



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1 suffered two such complaints. One took 9 months to resolve before the resident dropped
2 it. The second took 19 months. Those two complaints cost the association approximately
3 one month's condo fees in terms of legal expenses in order to resolve the problem. I
4 should also note that one of those cases involved what was alleged to be election fraud.
5 The complainant said that the secretary did not properly handle the proxies. The
6 complainant was the secretary. One wonders why the CCOC took jurisdiction. So we're
7 concerned, therefore, that as boards are struggling in order to hold down costs, balance
8 competing needs of residents, that we're now going to be hamstrung by having to
9 continually go before the CCOC. We take our fiduciary responsibility very seriously, and
10 many of us work full time and we are not lawyers, and that means that when we are
11 presented with litigation, we must go out, both prudently and out of necessity, and get a
12 lawyer, and that means costs are going to rise for all our residents, and we think that that
13 will be counterproductive. We urge the Council, therefore, to consider very strongly not
14 expanding the authority of the CCOC and, in fact, evaluate just how it's operating at
15 present. I thank you for your time and attention and hope you will pay attention to our
16 concerns.

17
18 COUNCIL PRESIDENT FLOREEN:

19 Thank you very much, Miss Thomas. And finally we have Christopher Hitchens. We're
20 wondering if you're the Mr. Hitchens who's the journalist.

21
22 CHRISTOPHER HITCHENS:

23 No, I'm the nice Christopher Hitchens.

24
25 COUNCIL PRESIDENT FLOREEN:

26 Oh, I see. Well, then, we'll keep that in mind.

27
28 CHRISTOPHER HITCHENS:

29 I am an attorney here in Rockville. I'm with the Thomas Schild Law Group, and our firm
30 practices almost exclusively in the areas of community association law, representing
31 condominiums and homeowners associations. And I'm also a panel chair on the
32 Commission on Common Ownership Communities and have presented cases to the
33 commission, as well, as a private sector attorney, and from 1992 to 1999, I was the
34 assistant county attorney who was the counsel to the commission. So I've been involved
35 with the commission for coming on 20 years. I think these are the first amendments to
36 Chapter 10B that have ever been offered up, and those of us in the industry have watched
37 with interest over the years to see whether amendments would ever be made, and now
38 we're very interested in the amendments that have been made and some that haven't
39 been made. These are going to be very important amendments that-- whatever that you
40 pass to this, because not only is it important to this commission here in the County, but
41 across the state, there are several jurisdictions and the state itself that look to
42 Montgomery County and this commission and the statute as the gold standard for this



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1 type of dispute resolution, and in fact, I think it remains unique in the United States. The
2 area that we think is the most important is the two amendments that deal with the
3 jurisdiction of the commission, and several of the speakers have mentioned them, and I
4 would just mention, sort of as a follow-up to Mr. Fleisher's comment--he gave you an
5 example where in a group of townhouses, there would be someone who would violate the
6 covenants, and under the current code, there would-- they felt that there may have not
7 been jurisdiction to deal with that issue. The flip side of that, however, is that we believe
8 that you may have an association who--who takes some act to enforce a covenant and
9 then decides not to take any further act to enforce it, either because it's going to be more
10 costly or just not a good reason, in their judgment. And yet, they're going to be subject to a
11 complaint from this new amendment that would allow dispute to include the idea of any
12 type of violation of a covenant. So we think it has two sides, and we would urge you to
13 very carefully look at that and look for examples of it--of how it will affect. Some other
14 things that we'd like to see the--the legislation address that aren't addressed in there now
15 is that-- one thing that is going to be happening with the amendments is that the
16 composition of the commission is going to change, and it's going to now have a majority of
17 homeowners. And these homeowners, when they're sitting on the panels, have a
18 tremendous power, through the quasi-judicial hearings, to significantly impact
19 associations, and we would like to see them have some training in administrative law and
20 also principles of community association law. Two other areas just very briefly. We would
21 like the legislation to address the commission's sequencing of the determination of
22 jurisdiction, because right now, the commission can wait to determine whether it really has
23 jurisdiction over the dispute until the parties have gone through a mediation, and this can
24 be several months. And the final thing I'd like to mention is that we'd like to see the statute
25 directly address attorneys' fees, and the Condominium Act provides that in a dispute, the
26 prevailing party is entitled to its attorneys' fees, and we would like to see this 10B
27 legislation be that simple, as well. Thank you.

28
29 COUNCIL PRESIDENT FLOREEN:

30 Thank you very much. I would ask that if folks have written comments, that would be very
31 helpful to get them to the Council so that we can-- committee can--Public Safety
32 Committee can review them, and let me extend my personal appreciation to the
33 individuals who are on these homeownership condominium boards. This is no easy task. I
34 think it's harder than being a member of the County Council. And with that, I'm going to
35 ask --I see that Councilmember Andrews has a question or a concern.

36
37 COUNCILMEMBER ANDREWS:

38 Thank you, Council President Floreen. Perhaps serving on the Architectural Review
39 Committees is like the hazard--you know, the hazardous, really hazardous job, but thank
40 you all for your testimony, and the more detailed, the better, so thank you for that, and
41 there's plenty of time to continue to provide input to the Council and the Public Safety
42 Committee, which I anticipate the Public Safety Committee taking up the bill in February.



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1 So please continue to give us examples of where you think the measure has merit and
2 where there may be problems, and the more specific, the better. Thank you all.

3
4 COUNCIL PRESIDENT FLOREEN:

5 Thank you, folks. And then our final matter for the afternoon in public hearing is a public
6 hearing on Bill 43-09, Callithea Farm Stables - Lease Amendment and Extension. This
7 would approve a lease amendment and extension to a ground lease between the
8 Maryland-National Capital Park and Planning Commission and George Sengstack for land
9 known as the Callithea Farm Stables. A PHED Committee worksession will be scheduled
10 later, and folks wishing to submit additional material for the Council's consideration should
11 try to do so before the close of business on Friday, January 29. And we have David Tobin
12 from the Planning Board to speak to us.

13
14 DAVID TOBIN:

15 Thank you very much, and thank you for your consideration of this bill. My name is David
16 Tobin. I'm the equine resources coordinator for the Facilities Management Division of
17 Montgomery Parks, and I'm representing Chairman Hanson today in seeking your support
18 of this--this legislation, which is, for the most part, a technical repair to a--to a lease that
19 was first put together at the beginning of a phased purchase of Callithea Farm in 2002. In
20 effect, the purchase was scheduled to take place over 5 years. In fact, it was completed in
21 3 years, but the lease that was provided to the operator went into effect at the beginning
22 of that phase. So what this amendment does is grant him the 20-year lease that was the
23 intent of the purchase by providing him with a 3-year extension to their lease to
24 compensate for the 3 years that he was under lease but didn't have the full use of the
25 property.

26
27 COUNCIL PRESIDENT FLOREEN:

28 OK. Thank you very much.

29
30 DAVID TOBIN:

31 Thank you.

32
33 COUNCIL PRESIDENT FLOREEN:

34 I don't see any questions, and the PHED Committee will take that up shortly.

35
36 DAVID TOBIN:

37 Great.

38
39 COUNCIL PRESIDENT FLOREEN:

40 Thank you very much. This concludes our Council session for today. I do invite my
41 colleagues to join us. We're going to stay here as the T&E Committee to take up a briefing
42 on the County's snow removal operations, at the particular request of Council Vice



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1 President Ervin and Councilmember Berliner. With that, Mr. Orlin, are you driving this
2 particular plow?

3
4 GLENN ORLIN:
5 Director Holmes is expected over here shortly. He has not arrived yet. Keith Compton is
6 here.

7
8 COUNCIL PRESIDENT FLOREEN:
9 Do you want us to take a couple of minutes? OK. Well, why don't we reconvene at 2:30,
10 then? Is that OK? He'll be here about then? OK. Thanks.